

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

T. HENLEY GRAVES  
*RESIDENT JUDGE*

SUSSEX COUNTY COURTHOUSE  
ONE THE CIRCLE, SUITE 2  
GEORGETOWN, DE 19947

February 17, 2006

John Donahue, Esquire  
Department of Justice  
114 E. Market Street  
Georgetown, DE 19947

Eric G. Mooney, Esquire  
11 S. Race Street  
Georgetown, DE 19947

RE: State of Delaware v. John Arnold, Def. ID# 0406020936

DATE SUBMITTED: November 18, 2005

Dear Counsel:

Pending before the Court is an appeal which the State of Delaware (“the State”) has filed pursuant to 10 Del. C. § 9902<sup>1</sup> seeking a review of a decision of the Court of Common Pleas

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<sup>1</sup>In 10 Del. C. §9902, it is provided in pertinent part as follows:

(b) When any order is entered before trial in any court suppressing or excluding substantial and material evidence, the court, upon certification by the Attorney General that the evidence is essential to the prosecution of the case, shall dismiss the complaint, indictment or information or any count thereof to the proof of which the evidence suppressed or excluded is essential. Upon ordering the complaint, indictment or information or any count thereof dismissed pursuant to the Attorney General’s certification, the reasons of the dismissal shall be set forth in the order entered upon the record.

(“CCP”) suppressing evidence on the ground no probable cause existed to arrest John Arnold (“defendant”) on a charge of violating 21 Del. C. § 4177(a).<sup>2</sup> This is my decision reversing the decision of the court below.

## FACTS

The facts before the court below were as follows.

The arresting officer was Detective Eric Chambers of the Seaford Police Department. He testified to the following. Around 3:12 p.m. on June 15, 2004, he was notified that he needed to respond to the Super Soda Center in Seaford, Delaware, to check on the welfare of someone. He arrived there around 3:17 p.m. and observed a dark colored pickup truck, facing east and parked. He pulled in behind the truck. He went inside the Super Soda Center and contacted Gary Brahmbhatt, the person working there. Mr. Brahmbhatt told Detective Chambers that the “guy

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(c) The State shall have an absolute right of appeal to an appellate court from an order entered pursuant to subsection (b) of this section and if the appellate court upon review of the order suppressing evidence shall reverse the dismissal, the defendant may be subjected to trial.

<sup>2</sup>In 21 Del. C. § 4177(a) it is provided:

No person shall drive a vehicle:

- (1) When the person is under the influence of alcohol;
- (2) When the person is under the influence of any drug;
- (3) When the person is under the influence of a combination of alcohol and any drug;
- (4) When the person’s alcohol concentration is .08 or more; or
- (5) When the person’s alcohol concentration is, within 4 hours after the time of driving .08 or more. Notwithstanding any other provision of the law to the contrary, a person is guilty under this subsection, without regard to the person’s alcohol concentration at the time of driving, if the person’s alcohol concentration is, without 4 hours after the time of driving .08 or more and that alcohol concentration is the result of an amount of alcohol present in, or consumed by the person when that person was driving.

over there is sleeping and pointed toward the truck.” Trial Transcript (“TT” at 54.) He walked up to the pickup truck. The truck was not running. The gas pump was not in the truck. He observed defendant seated in the driver’s seat with his feet on the driver’s side floor, but slumped over on his right-hand side towards the passenger side. The officer opened the door and touched defendant to see if he would wake up. Defendant started to sit up. Defendant’s clothes were in disarray. The detective noticed an odor of alcohol coming from defendant’s breath. Defendant’s eyes appeared to be dilated, watery. There was a red stain on defendant’s white shirt. The detective saw an empty wine bottle lying on the passenger floorboard. There was residue of red wine in that bottle.

Defendant exited the truck very slowly. He held onto the truck when he exited it and continued to lean against the truck. Defendant was talking slowly. His speech was mumbled, slightly slurred. Defendant said he had not had anything to drink since 8:00 in the morning. It was around 3:20 p.m. at this time.

The detective started some field tests. Defendant slowly completed the alphabet test. He failed the counting test.<sup>3</sup> The detective determined defendant had arthritis in his hands and legs, so he could not use the leg standing test and the walking and turning test. He was left with the finger to nose test because he noticed defendant could move his arms about. Defendant missed his nose both times.

Defendant also took the portable breath test which the court below did not consider on evidentiary grounds. The exclusion of that test is not an issue on this appeal.

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<sup>3</sup>Defense counsel attacked this failure and sought to establish it could have been a pass. Although the Court below never specified whether it accepted this test result as a failure, it is clear defendant failed the test.

The detective then arrested defendant for violating 21 Del. C. § 4177(a).

The question before CCP was whether there was probable cause to arrest defendant. The Court ruled in pertinent part as follows:

We heard from the evidence that Detective Chambers was called by dispatch to report to the Super Soda Center in Seaford, Delaware on June 15<sup>th</sup> at approximately 3:00 in the afternoon. When he arrived at the scene he contacted the proprietor of that business, the clerk there and asked him what was going on. The clerk responded pointing to a dark pickup truck that was parked at one of the gas pumps that quote unquote that guy was sleeping in his pickup truck.

The officer approached the pickup truck, the window was down. He observed an individual he identified as the defendant, John Arnold, in the driver's side of the vehicle with his feet in the floor well of the driver's side of the truck. He spoke to the defendant, asked the defendant if he was okay. He does not recall specifically how the defendant responded but he did notice an odor of alcohol emanating from the defendant's breath when he responded. He also noticed that the defendant's eyes were dilated, watery and bloodshot.

The detective also noticed a red stain on the defendant's white shirt. He observed in the passenger's side well of the truck an empty bottle that appeared to be a wine bottle to the officer, had a label on it, a white label that said Lake Country and has some red residue in it.

He asked the defendant to step out of the vehicle. The detective testified the defendant exited very slowly, he held on to the side of the truck as he exited and in conversing with the detective. He noted the defendant's speech was mumbled and slightly slurred. The defendant did lean on the truck when he was talking to the detective at first.

I'm quite clear that the detective had sufficient evidence at that point to suspect that something was amiss with the defendant. He had been asleep at a public place, at a gas pump. He smelled of alcohol. He had what appeared to be an apparent alcohol stain on his shirt, and there was an empty wine bottle with residue in the passenger compartment of the truck.

Therefore, the officer properly attempted to administer field sobriety tests. He administered the alphabet test, which the defendant passed. He administered a counting test, which the defendant did not perform exactly as instructed; however, the Court does acknowledge it's the defense's position that ... This Court does not expect perfect compliance, performance of these tests but reasonable performance.

The bright line is to determine whether or not the defendant's performance has any indicia of impairment.

Mere drinking alcohol is not sufficient to give someone probable cause or to obviously convict someone of driving under the influence. There has to be probable cause that the defendant is impaired as a result of his drinking.

The detective noted that the defendant had a disability. And the Court notes from its observation of the defendant and his gate [sic] and his hands that the defendant does suffer from arthritis. The arthritis does disfigure the defendant's hands. The detective, therefore, is very limited in the sobriety tests that he could properly ask the defendant to attempt.

He did ask the defendant to do the finger to nose test. After consideration of the detective's testimony regarding the defendant's performance on that test, and also the Court's observation of the defendant's hands, the Court does not believe it can put any weight at all one way or the other on the finger to nose test given the condition of the defendant's hands, and the testimony that the defendant failed to properly touch his nose. But there was not any further details, for instance, how close he came, any sufficient detail in that testimony for the Court to determine whether it was indeed a failure or not passed upon the Court's observation of the defendant's hands.

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So the Court has to determine whether the balance of the information presented to the officer that's been counted, was sufficient to arrive at probable cause. And as I said this is a difficult factual situation but based upon the precedence, as the Court understands them, I do not believe that the State has met its burden of proof. I should say as to probable cause in this instance, without the portable breath test results.

The presence of the defendant at the pump asleep is evidence of some impairment, but I do not believe it rose to the level, after balancing the evidence here today of probable cause, even considering the other evidence that the officer was able to present to the Court.

So the motion to suppress is granted.

TT at 109-13.

The State then certified that the suppressed evidence was essential to the prosecution of

the case, and filed an appeal with this Court pursuant to 10 Del. C. § 9902.

## DISCUSSION

The applicable standards of review for appeals from CCP to the Superior Court are de novo for legal determinations and “clearly erroneous” for findings of fact. State v. High, Del. Super., C.A. No. 90-09-0243, Toliver, J. (March 7, 1995). If the factual findings of the court below are “sufficiently supported by the record and are the product of an orderly and logical deductive process, they must be accepted notwithstanding the fact that the Superior Court may have reached opposite conclusions.” Id. Accord State v. Karg, Del. Super., Def. ID# 9911000194, Babiarz, J. (May 31, 2001).

The sole issue here is whether the officer had probable cause to arrest defendant for violating 21 Del. C. § 4177(a). The standard to apply for reviewing a probable cause determination on appeal is set forth as follows in Lopez v. State, 861 A.2d 1245, 1248-49 (Del. 2004):

"The probable cause standard is incapable of precise definition ...because it deals with probabilities and depends on the totality of the circumstances." n3  
Nevertheless, the substance of all the definitions of probable cause is a reasonable ground for belief of guilt, that is particularized with respect to the person to be arrested. n4 A determination of probable cause for an arrest is grounded, first, in the events leading up to the arrest and, second, in the decision whether those events amount to probable cause as a matter of law. n5 "The first part of the analysis involves only a determination of historical facts, but the second is a mixed question of law and fact ...." n6

----- Footnotes -----

n3 Maryland v. Pringle, 540 U.S. 366, 124 S. Ct. 795, 800, 157 L. Ed. 2d 769 (2003).

n4 Id.

n5 Ornelas v. United States, 517 U.S. 690, 696, 134 L. Ed. 2d 911, 116 S. Ct. 1657 (1996).

n6 Id. Accord Purnell v. State, 832 A.2d 714, 719 (Del. 2003).

----- End Footnotes -----

Findings of historical fact are subject to the deferential "clearly erroneous" standard of review. n7 This deferential standard applies not only to historical facts that are based upon credibility determinations but also to findings of historical fact that are based on physical or documentary evidence or inferences from other facts. n8 "Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." n9 Once the historical facts are established, the issue is whether an undisputed rule of law is or is not violated. n10 Accordingly, appellate courts review de novo whether there is probable cause for an arrest, as a matter of law. n11

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n7 Ornelas v. United States, 517 U.S. at 696.

n8 See id. Accord Anderson v. City of Bessemer, 470 U.S. 564, 574, 84 L. Ed. 2d 518, 105 S. Ct. 1504 (1985).

n9 Anderson v. City of Bessemer, 470 U.S. 564, 574, 84 L. Ed. 2d 518, 105 S. Ct. 1504 (1985).

n10 Ornelas v. United States, 517 U.S. at 696-97 (quoting Pullman-Standard v. Swint, 456 U.S. 273, 289, n. 19, 72 L. Ed. 2d 66, 102 S. Ct. 1781 (1982)).

n11 Id. at 697.

----- End Footnotes -----

The probable cause definition in the context of a driving under the influence case is more fully explained in Evon v. State, Del. Super., Def. ID# 9804017675, Barron, J. (July 26, 1999) at 10-13:

An officer has probable cause when he has information which would cause a

reasonable person to believe that such a crime has taken place. n12

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n12 State v. Maxwell, Del. Supr., 624 A.2d 926, 929-30 (1993) (citing Clendaniel v. Voshell, Del. Supr., 562 A.2d 1167, 1170 (1989)).

----- End Footnotes-----

Probable cause has no precise definition; it lies somewhere between suspicion and sufficient evidence to convict. n13 In State v. Maxwell, the Delaware Supreme Court reiterated the federal Supreme Court's statement that the standard of probable cause is "only the probability, and not a prima facie showing." n14 It is now well established that probable cause must be measured "by the totality of the circumstances through a case by case review of 'the factual and practical considerations of everyday life on which reasonable and prudent [people], not legal technicians, act.'" n15

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n13 Thompson v. State, Del. Supr., 539 A.2d 1052 (1988).

n14 State v. Maxwell, 624 A.2d at 928 (quoting Illinois v. Gates, 462 U.S. 213, 235, 76 L. Ed. 2d 527, 103 S. Ct. 2317 (1983) (quoting Spinelli v. United States, 393 U.S. 410, 419, 21 L. Ed. 2d 637, 89 S. Ct. 584 (1969)).

n15 624 A.2d at 928 (quoting Illinois v. Gates, 462 U.S. at 231).

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The Maxwell Court, when reviewing the factors the police had relied upon for establishing probable cause in that case, stated that any one of the facts, considered in isolation, may be insufficient to establish probable cause. However, the totality of the circumstances presented reveals that based upon their observations, their training, their experience, their investigation, and rational inferences drawn therefrom, the police possessed a quantum of trustworthy factual information "sufficient in themselves to warrant a [person] of reasonable caution"



to conclude that probable cause existed to believe Maxwell was driving under the influence of alcohol at the time of the accident. n16

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n16 624 A.2d at 931 (quoting Brinegar v. United States, 338 U.S. 160, 175-76, 93 L. Ed. 1879, 69 S. Ct. 1302 (1949)(emphasis added)).

----- End Footnotes-----

A presumption of innocence is inapplicable at the threshold determination of probable cause. The question the court below had to ask was whether, viewing the totality of the circumstances known to the officer at that time, a reasonable person would believe a fair possibility existed that the defendant violated 21 Del. C. § 4177(a). State v. Maxwell, 624 A.2d 926, 930 (Del. 1993). There is no factoring in of innocence or considering a possible innocent explanation for each of the objective indications of impairment. Id.

The factors establishing probable cause in this case were the following. Defendant was asleep or passed out at the gas pump. He had to be awakened. There was an empty bottle of wine on the floor of his truck, and what appeared to be a wine stain on his shirt. He smelled of alcohol. His speech was mumbled and slurred. His eyes were bloodshot and dilated. He had difficulty exiting the truck and had to stand against the truck after he exited it. He failed the counting test. He admitted to having drunk that day, albeit many hours earlier. These factors were sufficient to lead a reasonable person to determine probable cause existed to arrest defendant for violating 21 Del. C. § 4177(a). See Bryant v. State, Del. Super., C.A. No. 84A-DE-12, Gebelein, J. (Feb. 6, 1985) (probable cause established by the following factors: officer called to scene of purported

drunken driving incident; defendant's car in roadway; defendant was asleep and car was still warm; officer had to open door and shout to awaken defendant; an order of alcohol on defendant's breath; defendant's speech was slurred; and officer had to support defendant); State v. Arnold, Del. CCP, Case No. 0202002306, Smalls, C.J. (July 2, 2003) (car located in middle of busy highway; glassy, bloodshot eyes; odor of alcohol; recent vomit in car; defendant's failure of balance test constituted probable cause).

In light of the foregoing, the decision of the Court below is reversed and remanded for further proceedings consistent with this decision.

IT IS SO ORDERED.

Very truly yours,

T. Henley Graves

cc: Prothonotary's Office  
Court of Common Pleas, Clerk's Office